IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 690 OF 2002

1. G. Ramkrishnan,)
Account Stock Verifier)
Work Shop Account)
Office,)
Central Railway / Parel) .....Petitioner
Bombay - 400 012

V/s

1. Union of India,)
Through the General)
Manager, Central)
Railway C.S.T., Mumbai -)
400 001)
2. The Secretary,)
Ministry of Railways,)
Railway Board, New)
Delhi-110 001.)
3. Financial Adviser &)
Chief Accounts Officer,)
Central Railway, C.S.T.)
Mumbai - 400 001.)
4. The Executive)
Director, Pay)
Commission, Railway) .....Respondents.
Board, New Delhi - 110
001.

Shri G.J. Mohan Rao with Shri A.B. Varma for the petitioner

Shri Suresh Kumar with Ms. Seema Chatri for the

respondents

ALONGWITH
WRIT PETITION NO.3582 OF 1997

1. Subhash V. Malgi)
2. S.D. Joshi)
3. Prakash Pandit)
4. R.V. Iyer)
5. P.M. Mathure)
6. S.R. Phadke)
7. R.F. Chauhan)
8. A.K. Bajpayee)
9. A.V. Lagad)
10. V.M. Shinde)
11. N.B. Bhangre)
12. M. Ramamoorthi)
13. B.G. Lalla)
14. G.S. Tare)
15. N.B. Damodar)
16. M.R. Rautrao)
17. P.V. Phadtare)
18. S.M. Tillu)
19. K.J. George)
20. J.B. Sen)
21. S.M. Phanse)
22. G.G. Nair)
23. V.L. Lohakare)
24. G.V. Gadkari)
25. G. Ramkrishnan)
[deleted as per Court's order)
dated 11.4.2001))
26. N.G. Chandratre)
27. A.L. Kamble)
28. P.B. Marne)
29. Siddique)
30. V.V. Nirkhe)
31. V.K. Gaikwad)
32. M.Y. Ahire)

33. Gujare)
34. C. Worlikar)
35. Konte)
36. M.D. Sorte)
37. L. Saibaba
38. Thomas)
(All the petitioners are)
working as Accounts Stock)
Verifiers in the Mumbai) .....Petitioners.
Division, Central Railway

V/s

1. Union of India,)
through the General Manager,)
Central Railway, C.B.T.,)
Mumbai 400 001)
)
2. The Secretary)
Ministry of Railways, Railway)
Board, New Delhi 110 001.)
)
3. Financial Advisor & Chief)
Accountants Officer, Central)
Railway, C.S.T. Mumbai 400)
001

4. The Executive Director)
Pay Commission, Railway)
Board,) .....Respondents.
New Delhi - 110 001.

Shri Ramesh Rammurthy with Shri S. Rammurthy for the petitioners.

Shri Suresh Kumar with Shri R.R. Shetty for the respondents.

CORAM: V.G. PALSHIKAR, Acg. C.J. &

V.M. KANADE, J.

Date : 25th July, 2006

ORAL JUDGEMENT: (Per V.M. Kanade, J.)

1. Both these Petitions can be disposed by a common judgment since the question involved in both of them is identical.

2. Petitioners in Writ Petition No.3582 of 1997 are challenging the judgment and order passed by the Central Administrative Tribunal, Mumbai Bench, which dismissed the Original Application No. 714 of 1996 which was filed by the petitioners. Petitioner in Writ Petition No. 690 of 2002 has directly approached this Court without approaching the Central Administrative Tribunal (CAT) and sought a declaration that three additional increments which were granted to the Account Stock Verifiers on their passing Appendix IV-A Examination, may be treated as a part of basic pay for all purposes and to direct the respondents to pay the arrears deducted or payable to the petitioner, after taking into account three additional increments.

3. The short question which falls for consideration before this Court is : whether the additional increments which were given to the petitioners for passing Appendix IV-A Examination could be treated as a part of the basic pay and whether they would be entitled to the Dearness Allowance on the basis of treating the additional increments as a part of basic pay and, secondly, whether the same could be counted for pensionery purpose and, thirdly, whether the recovery could be made of the payment which had already been made to the petitioners since last 22 years and, lastly, whether it was necessary to interfere with the order passed by the CAT in O.A. No. 714 of 1996?

FACTS:

4. Brief facts which are relevant for the purpose of deciding the present Writ Petitions are as under :-

5. On 11/10/1973, an Award was given by the Bord of Arbitration under the Joint Consultative machinery whereby two additional increments were to be given to Accounts Stock Verifiers on their passing Appendix IV-A Examination.

Then, on 05/11/1974 an order was issued by the Railway Board in the name of President, accepting the Award. Thereafter, on 09/03/1978, a letter was issued by the Railway Board clarifying that the benefit of additional increments would be available to all the Accounts Stock Verifiers who passed Appendix IV-A Examination before 01/01/1973 or after that date and even to Accounts Stock Verifiers who were exempted from passing the said Examination. On 03/03/1989, an order was issued by the Ministry after obtaining sanction of the President and three additional increments were granted to the Accounts Stock Verifiers on passing Appendix IV-A Examination. The order stated that the effect would be given to those orders from 01/01/1986. Accordingly, three additional increments were given and they were treated as part of Pay and Dearness Allowance was given on the basis of the said consolidated Pay, continuously till 08/05/1996. A query was raised for the first time on 23/11/1994 i.e almost after a lapse of 20 years after the Award was passed by the respondent No.4 i.e. Executive Director, Pay Commission, Railway Board, New Delhi. An opinion was sought, whether the increments

granted should be treated as additional increments or advance increments. The Railway Board, pursuant to the said query, clarified on 25/07/1995 that the three increments granted were to be treated as an additional increments and that they should be absorbed in future increments. In view of the order passed by the Railway Board, a letter was issued by respondent No.4 dated 08/05/1996 in which it was clarified that three additional increments should not be treated as part of basic pay for calculating Dearness Allowance etc.

6. Being aggrieved by the said letter, petitioners in Writ Petition No.3582 of 1997 filed O.A. No. 714 of 1996 before the CAT, Mumbai Bench, challenging the clarification dated 08/05/1996. An interim order was passed by the CAT, Mumbai Bench, dated 26/07/1996, restraining the respondents from deducting pay of the petitioners on account of the clarification dated 08/05/1996. The CAT dismissed the O.A. No. 714 of 1996. Being aggrieved by the said judgment and order, Writ Petition No. 3582 of 1997 was filed. The Petition was admitted and respondents made a statement that they would not initiate any proceedings for

recovery of any amount paid by them till that date on the basis of the order passed by the CAT till the disposal of the Writ Petition.

7. Petitioner in Writ Petition No.690 of 2002 directly approached this Court, challenging the Order passed by the CAT in O.A. No.714 of 1996 and also challenging the Order dated 08/05/1996.

SUBMISSIONS:

8. The learned Counsel appearing on behalf of the petitioners vehemently urged before us that the order which was passed on 08/05/1996 was patently illegal since no hearing was given to the petitioners before the said order was passed and, therefore, it was in breach of principles of natural justice and the said order had entailed adverse civil consequences to the petitioners and, therefore, the respondent No.4 was duty bound to give hearing to the petitioners before passing the impugned order. It was further contended that three additional increments were given pursuant to the Award which was passed in the year 1973 and, therefore, the said Award could not be set aside

without obtaining sanction of the Parliament. It is further submitted that the said Award had been implemented by the Railway Board which had obtained sanction of the President and, therefore, it had a statutory force and, consequently, the said order could not have been modified by respondent No.4 by issuing a clarification dated 08/05/1996. It is further submitted that the additional increments were being treated as basic pay for almost 22 years and it was not open for the Railway Board to take a different stand than the one which was taken earlier. It is also submitted that though the interim order was passed by the CAT, Mumbai Bench, respondents had recovered the amount which had been paid to them. It is submitted that it was not open for respondents to recover the said amount because even if case of the respondents was accepted, the said

payment had been made pursuant to the orders which were passed by the Railway Board and, therefore, it was not open for the respondents to deduct the said amount which was legitimately paid to the petitioners. The learned Counsel relied upon the judgment of the Supreme Court in the Case

of **Shyam Babu Verma and Others Vs. Union of India and Others,** reported in **(1994) 2 SCC 521.**

9. We have heard the learned Counsel appearing on behalf of the petitioners and the learned Counsel appearing on behalf of respondents. We have given our anxious consideration to the submissions made by both the counsel.

10. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioners that the respondents were not competent to pass the impugned order. In our view, CAT has given cogent reasons while considering the correctness of the impugned order. The short question involved in the present case is : whether additional/advance increments which were granted to the Stock Verifiers for passing Appendix IV-A Examination should be included in the basic pay and, thereafter, the said consolidated amount of Dearness Allowance should be paid to the said employees? It is obvious that a mistake was committed by the respondents in adding the advance/additional increments to the basic pay and,

thereafter, calculating the Dearness Allowance. After this mistake was noticed, a query was accordingly raised by the concerned authorities and, on inquiry, it was established that in all these years, Dearness Allowance was calculated on the consolidated pay as calculated by the respondents. This mistake was rectified by the impugned Circular dated 08/05/1996. The CAT has correctly observed that if the intention was to add the allowance to the pay, a specific order to that effect would have been made. The CAT has also noticed Rule 1303 of the said Rules and which is equivalent to FR 17 and 19 in which it has been specifically stated that additional increment cannot be treated as pay. Further, the petitioners are Group “C” employees and not appointed by the President of India and, therefore, merely because the Circular is issued with the approval of the President of India that does not give statutory force to the said Circular and the said Circular, therefore, cannot replace the statutory Rule 1303. We do not see any infirmity in the order passed by the CAT.

11. However, the second submission made by the learned

Counsel appearing on behalf of the petitioners will have to be accepted. It was submitted that since the payment had been made by the respondents over a period of 22 years and there was no mistake committed by the present petitioners, it was not open for the respondents to recover the said amount from the petitioners. The Supreme Court in the case of **Shyam Babu Verma and Others Vs. Union of India and Others,** reported in **(1994) 2 SCC 521** in para 11 of its judgment has observed as under:-

> "11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be

> taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

The ratio of the said judgment, therefore, clearly applies to the facts of the present case. The CAT has directed that the amount which is already paid as Dearness Pay Allowance prior to the impugned order was not liable to be reimbursed. It, however, further ordered that if any Dearness Pay Allowance was paid by virtue of the interim order passed by the CAT, the applicants should not get any benefit after passing of the impugned order. The grievance has been made by the learned Counsel appearing on behalf of the petitioners that though interim orders were passed by the CAT, the respondents have made recovery from some of the petitioners. In our view, if any such recovery has been made by the respondents, the same shall be reimbursed to the petitioners. The respondents would not be entitled to recover any amount which has been paid up to the passing of the impugned order by the respondents.

12. In the result, both the Writ Petitions are partly allowed in the above terms. Rule is made absolute accordingly.

(V. G. PALSHIKAR, Acg.C.J.)

(V.M. KANADE, J.)